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In re Application of
Fieback KLAUS et al : DECISION ON
PCT Application No. PCT/EP99/01809 :
International Filing Date: 18 March 1999 : PETITION UNDER
Priority Date Claimed: 29 April 1998 :
Attorney Docket Number: 22899N2PCT/US : 37 CFR. 1.10(d)
For: MICROWAVE-ACTIVATABLE LATENT :
HEAT STORAGE BODY :

This is in response to applicants' "Petition Under 37 CFR §1.10(c) To Accord a Filing Date As Of The Date Of Deposit As 'Express Mail' and Request For Correction Of Filing Receipt," filed 05 July 2001, which is being treated as a petition under 37 CFR §1.10(d) to accorded a filing date of 27 October 2000.

BACKGROUND

On 18 March 1999, the above international application was filed in the European Patent Office and claims an earliest priority date of 29 April 1998. A copy of the intentional application was transmitted on 04 May 1999 to the USPTO from the International Bureau.

On 05 July 2001, petitioner filed the present petition that the application be accorded an international filing date of 27 October 2000. The petition states that the correspondence was deposited on 27 October 2000 as evidenced by a purported hand-written note of an US post office clerk who accepted the application on 27 October 2000 but who refused to give the undersigned a copy of the actual "Express Mail" mailing receipt.

The petition is accompanied by a copy of Express Mail label "EJ450233984US" with a month box in the "date in" section that is blank, and a copy of a hand-written note.

DISCUSSION

Where the "date in" on the Express Mail mailing label is believed to be in error, applicants may file a petition under 37 CFR 1.10(d) to have the correspondence accorded a filing date as of the date of the correspondence is shown to have been deposited with the USPS. The requirements under 37 CFR 1.10(d) are:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. (Emphasis added).

Applicants have satisfied items (1)-(2) above.

Regarding item (3), applicant's agent has not provided an adequate showing that the correspondence was deposited with the USPS on 27 October 2000. The petition does not include corroborating evidence from the USPS or sufficient evidence that came into being after deposit and within one day of the deposit as stipulated under §513 of the MPEP.

Besides Mr. Farber's assertion and a copy of alleged US postal clerk (their is no clear indication that it was written by a US postal clerk or that it is a USPS official notation), no evidence or corroborating evidence has been provided from a USPS employee such as an affidavit from the USPS employee that wrote the hand-written stating that the above captioned-papers were deposited at the Express Mail drop box with the USPS clerk on October 27, 2000.

On the contrary, the USPS record as evidenced by the Express Mail receipt indicates at the "Date in" box a date of deposit of 28 October 2000. This is date that the USPTO considers the correspondence as filed in the Office under 37 CFR §1.10(a). Petitioner has not satisfied item (3) because the only USPS official notation that petitioner has submitted to the USPTO has a date of deposit of 28 October 2000. Accordingly, petitioner has not adequately shown that the correspondence was deposited at an "Express Mail" drop on 27 October 2000.

For the above reasons, it would not be appropriate to grant the petition under 37 CFR 1.10(d) at this time.

CONCLUSION

For reasons above, the petition under 37 CFR 1.10(d) is **DISMISSED**, without prejudice.

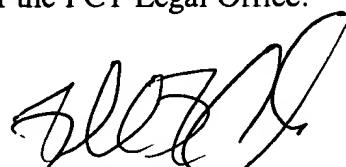
If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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